THE HONOURABLE SRI JUSTICE
ASHUTOSH MOHUNTA

C.M.A.No.2074 of 2004

Date of Judgment: 20-09-2012

Between:

E.Shyamala

..Appellant

And

1. Abdul Shabir and another

..Respondents

The Court made the following Judgment:

THE HONOURABLE SRI JUSTICE
ASHUTOSH MOHUNTA

C.M.A.No.2074 of 2004

Judgment:

The claimant has filed this appeal impugning the award passed by the Motor Accident Claims Tribunal (Additional District Judge), Nizamabad, in O.P.No.344 of 1995, dated 09-07-2001 vide which a compensation of Rs.1,29,600/- was awarded together with proportionate costs and interest at 12% per annum from the date of the petition till realisation.

Briefly stated, the facts of the case are that on 05-02-1995, while the claimant was travelling in a lorry bearing No.ATJ 407 from Nizamabad to Adilabad and when the said lorry reached Chincholi cross road, Nirmal, another lorry bearing No.AP 25T 1452 ("crime vehicle"), being driven by its driver, at high speed and in a rash and negligent manner, came in opposite direction and dashed against the lorry in which the claimant was travelling i.e. ATJ 407; as a result of which, lorry bearing No.ATJ 407 turned turtle and she suffered multiple injuries all over the body. Immediately after the accident, she was shifted to the Government Hospital, Nirmal and thereafter, to the Government Headquarters Hospital, Nizamabad; from there she was shifted to NIMS, Hospital, Hyderabad, for better treatment. Hence, she filed the aforesaid claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short "the Act") claiming compensation of Rs.3,00,000/-.

Before the Tribunal, the 1st respondent, owner of the crime vehicle, filed a counter denying the material averments made in the claim petition. It was averred that the crime vehicle was not driven by its driver in a rash and negligent manner and dashed against the lorry bearing No.ATJ 407 in which the claimant and others were travelling. It was also averred that the lorry bearing No.ATJ 407 was carrying huge passengers, therefore the 1st respondent was not liable to pay any compensation. It was further averred that he was the owner of the crime vehicle and the same was insured with the 2nd respondent—Insurance Company; that the policy was valid from 10-07-1994 to 09-07-1995 covering the period of accident; that the driver of the crime vehicle was having valid driving license at the time of accident; and therefore, the insurer is liable to pay the compensation.

The second respondent—Insurance Company filed a separate counter stating that lorry bearing No.ATJ 407, which was a goods carrying vehicle, carried 60 passengers contrary to the provisions of the Act as well as the terms and conditions of the policy; and therefore, the Insurance Company was not liable to pay the compensation to the claimant. It was also averred that the claimant had to prove that the driver of the lorry bearing No.ATJ 407 was having valid driving licence and the insurance policy was valid at the time of accident. It was also averred that the claimant had failed to prove that she got operated twice to her leg and that she suffered 70% permanent disability and was unable to move from the bed.

Basing on the above pleadings, the Tribunal framed as many as three issues as to whether the accident occurred due to the rash and negligenet driving of the lorry No.AP 25T 1452 by its driver; whether the appellant/claimant is entitled to compensation; if so to what amount and against which of the respondents, and to what relief.

To prove her case, the claimant herself was examined as P.W.1, besides examining Dr.T.Narsing Rao, Civil Assistant Surgeon, Government Headquarters Hospital, Nizamabad as P.W.2 and Dr.L.Narendranath, Orthopaedic Surgeon, NIMS Hospital, Hyderabad as P.W.3 and got marked Exs.A1 to A68 and Ex.C1—the disability certificate. On behalf of the respondents, R.Ws.1 to 3 were examined and Exs.B1 to B19 were marked.

The Tribunal, after thoroughly evaluating the entire evidence brought on record, held that the accident occurred due to the rash and negligent driving of the crime vehicle by its driver. Holding so, the Tribunal awarded a sum of Rs.70,000/- towards grievous injuries; a sum of Rs.12,000/- towards simple injuries; a sum of Rs.9,000/- towards loss of income and nourishment; and a sum of Rs.38,600/- towards medical expenses. Thus, in all, it awarded a total sum of Rs.1,29,600/- together with proportionate costs and interest at 12% per annum from the date of petition till realisation by holding that the respondents should pay the said compensation jointly and severally to the appellant/claimant.

Being dissatisfied with the quantum of compensation so awarded, the claimant is before this Court seeking award of the compensation as claimed in her claim petition.

In this appeal, the learned counsel for the appellant submitted that the claimant sustained 70% permanent disability, as per Ex.C1—Disability certificate and therefore, the Tribunal ought to have awarded the compensation as sought for in the claim petition filed by the appellant. He also pointed out that the claimant took treatment for four months by spending considerable amount, however, the Tribunal erred in awarding Rs.9,000/- only towards loss of income. The learned counsel also contended that the Tribunal erred in not awarding any amount towards pain and suffering. The Learned counsel further submitted that the Tribunal ought to have awarded Rs.1,50,000/- as claimed by the claimant towards medical bills instead of restricting it to Rs.38,600/-. He therefore prayed that the appeal may be allowed by awarding the compensation as claimed for in the claim petition.

On the other hand, the learned standing counsel for the Insurance Company contended that the Tribunal after careful scrutiny of the evidence brought on record rightly awarded Rs.1,29,600/- towards compensation, which is just and reasonable and that there are no valid grounds to interfere with the award of the Tribunal.

Perused the record.

It is elicited from the evidence of P.W.1, who deposed that on 05-02-1995 at 6.15 A.M., that while she was travelling in a lorry bearing ATJ 407 from Nizamabad to Adilabad, and when it reached Chincholi cross road, Nirmal, the crime vehicle being driven by its driver, in a rash and negligent manner, dashed against the lorry bearing No.ATJ 407; as a result of which, the lorry bearing No.ATJ 407 turned turtle and thereby she received fracture injury to right leg and injury to stomach. This part of the evidence was not at all rebutted by the respondents. Ex.A1 is the FIR filed against the driver of the crime vehicle, which buttresses the oral testimony of P.W.1. Though the owner of the lorry and the Surveyor and investigator of the Insurance Company were examined as R.Ws.1, 2 and 3 respectively nothing adverse against the oral testimony of P.W.1 was elicited. Thus, the evidence of the appellant/claimant remained unchallenged.

Basing on the above evidence, the Tribunal rightly held that the accident occurred was due to the rash and negligent driving of the crime vehicle by its driver. In my considered view, for the discussion made

hereinabove, the said finding of the Tribunal does not call for any interference by this Court in this appeal.

It may be noticed that the said aforesaid finding of the Tribunal having not been assailed in any appropriate proceedings attained finality. Further, it is to be seen that the Insurance Policy issued by the second respondent-Insurance Company in respect of the crime vehicle was in force as on the date of the accident.

Apropos the quantum of compensation, it is to be seen that the appellant/claimant deposed in her evidence that she suffered a fracture to her right leg and injuries all over the body. She deposed that immediately after the accident she was taken to Government Hospital, Nirmal, and thereafter shifted to Government Hospital, Nizamabad, and from there she was shifted to NIMS, Hyderabad, whereat she took treatment for about one month. She further deposed that she remained in NIMS for about one month and the Doctors at NIMS hospital operated her hands, legs and stomach twice and one rod each were inserted in her hand and right leg.

P.W.3—an Orthopaedic Surgeon, NIMS Hospital, Hyderabad, in his evidence deposed that the claimant was admitted in the hospital on 06-02-1995 with the history of being involved in a lorry accident at Chincholi cross road, Nirmal, and she had suffered a fracture of pelvis, right humorous and right fumer and multiple abrasions. He further deposed that the claimant was operated on 08-02-1995 and 21-02-1995 to her right leg and plates and nails were fixed. Ex.A.65—discharge record buttresses the same. He advised the claimant to have bed rest for about three months.

The evidence of P.Ws.1 and 3 was corroborated by the evidence of P.W.2—Dr.T.Narsing Rao, Civil Assistant Surgeon, Government Headquarters Hospital, Nizamabad; who stated that he examined the claimant on 09-07-1999 and assessed the disability suffered by her at 70% and accordingly issued Ex.C1—disability certificate. The injuries mentioned in Ex.A.65—discharge summary are relatable to the injuries mentioned in Ex.C1.

Thus, considering the nature and gravity of the fracture and injuries suffered by the appellant, the Tribunal awarded Rs.70,000/- (Rs.35,000/- for each grievous injury x 2) and Rs.12,000/- (Rs.3,000/- for each simply injury x 4), which in my considered opinion, is just and reasonable and the same need

not be interfered with.

P.W.1 in her evidence stated that she was having six acres of land and used to raise commercial crops i.e. maize, chilli and turmeric and thereby earning Rs.60,000/- per annum. However, she has not filed any document to prove the same. In those circumstances, the Tribunal awarded a sum of Rs.9,000/- towards conveyance, loss of income and nourishment, which seems to be quite inadequate.

Admittedly, the claimant met with a road accident on 05-02-1995 and was admitted in hospital; as a result of which, she was not in a position to attend her agricultural works. The Doctors, who treated her in the hospital, advised her to take bed rest for about four months. In the said period of four months, she might have spent considerable amount for conveyance and extra nourishment. Considering the same, it is quite just and reasonable to award a sum of Rs.20,000/- towards loss of income, extra nourishment and conveyance considering the facts and circumstances of the case.

As per the medical records, the claimant was admitted in NIMS hospital, Hyderabad, on 06-02-1995 and was discharged on 06-03-1995; she got operated twice on
08-02-1995 and 21-02-1995 to her right femural and right humorous and plates were inserted. After discharge from the hospital also she undertook treatment for a considerable time. P.W.2, who was working as a Civil Assistant Surgeon, Government Headquarters Hospital, Nizamabad, assessed the disability of the claimant at 70%. However, the Tribunal did not award any amount of compensation under the head of pain and suffering. Considering the nature of facture and injuries sustained by the claimant and the period of treatment, it is just and appropriate to award Rs.30,000/- towards pain and suffering, which I do so.

As seen from the evidence, the claimant though claimed Rs.1,50,000/- towards medical expenses, but filed bills only to a tune of Rs.38,525/-. In view of the same, the Tribunal rightly awarded Rs.38,600/- towards medical expenses, which in my considered opinion is just and reasonable and needs no interference.

Thus, the appellant/claimant is now entitled to receive the total compensation of Rs.1,70,600/- (Rs.70,000 + Rs.12,000/- + Rs.20,000/- +

Rs.30,000/- + Rs.38,600/-). However, the claimant is entitled to interest as awarded by the Tribunal from the date of petition till date of realisation on the amount so awarded by it i.e. i.e. Rs.1,29,600/- and at 9% per annum on the enhanced compensation from the date of judgment till realisation.

In the result, the Civil Miscellaneous Appeal is accordingly partly allowed to the extent indicated above. The miscellaneous petitions pending consideration, if any, shall stand dismissed in consequence of this order. There shall be no order as to costs.

_____

ASHUTOSH MOHUNTA, J.

20-09-2012

Murthy